

EXHIBIT B TO RESPONSE
TO MOTION FOR
SUMMARY JUDGMENT

Case 13-CA-217957

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

UNIVERSITY OF CHICAGO,)	
)	
Employer,)	
)	
and)	Case No. 13-RC-198365
)	
INTERNATIONAL BROTHERHOOD OF)	
TEAMSTERS, LOCAL 743,)	
)	
Petitioner.)	

**THE UNIVERSITY OF CHICAGO'S OFFER OF PROOF IN SUPPORT
OF ITS OBJECTIONS TO THE CONDUCT OF THE ELECTION
AND CONDUCT AFFECTING THE RESULTS OF THE ELECTION**

Pursuant to Section 102.69(a) and 102.66 of the Rules and Regulations of the National Labor Relations Board, the University of Chicago submits the following offer of proof in support of its objections to the conduct of the election and conduct affecting the results of the election held in the above-captioned matter on June 2 and June 5-8, 2017, as follows:

Offer of Proof in Support of Objection No. 1: The University objects to the conduct of the election and conduct affecting the results of the election because on June 2, 2017, Petitioner engaged in improper electioneering in a no-electioneering zone while the election was in progress. As described in greater detail below, Union agents posted "Vote Yes" signs near the polling place, in areas of the Libraries that voters had to pass on their way to the polling place. Even after the Board Agent instructed them to remove any electioneering material along the route students would have to take to get to the polls, Union agents wearing International Brotherhood of Teamsters ("Teamsters") logos and displaying a "Vote Yes" sign that also bore Teamsters logos stationed themselves on the steps outside the main entrance to the Regenstein Library, the primary voting

location in this case. Virtually all students wishing to vote at this location would pass these Union agents in order to vote. Union agents were also observed having conversations with at least one voter immediately outside of a polling place. This conduct improperly coerced a substantial portion of eligible voters and destroyed the laboratory conditions necessary for an election. *Milchem, Inc.*, 170 NLRB 362 (1968) (“The final minutes before an employee casts his vote should be his own, as free from interference as possible”).

In support of this objection, the University offers the following facts, which it would prove with witnesses and documents if granted a hearing:

(a) June 2, 2017 was the first day of the election and the last weekday prior to the commencement of the final exams period at the University of Chicago. The University expected the highest turnout on June 2, 2017 because it was the last day prior to final exams. The University did not anticipate a significant turnout during the final exam period (June 5-8) because during that time students are focused on taking exams, and many leave campus for the summer after taking their last exam, leaving their on- and off-campus residences. (Witnesses: Jake Rubinstein, Hannah Landsman; Documents: Notice of Election; University of Chicago Academic Calendar.)

(b) On June 2, 2017 there were two designated polling places for the election: one in Room 354 at the Regenstein Library and a second in an office at the Social Security Administration (“SSA”) Library. The polls were open at both locations during two sessions that day: 10:00 a.m. to 1:00 p.m. and 3:00 p.m. to 5:30 p.m. Regenstein was the main polling place and, ultimately, 90 out of the 93 votes were cast at Regenstein. (Witnesses: Jenny Goltz; Document: Notice of Election.)

Pre-election Conference

(c) The parties gathered for a pre-election conference on June 2 at approximately 9:00 a.m. in Room 354 at the Regenstein Library, on the third floor. Jenny Goltz, outside counsel, Jake Rubinstein, Executive Director of Employee/Labor Relations and Hannah Landsman, Human Resources Assistant, were present on behalf of the University. Three representatives from the Teamsters were there – one (Business Agent Jarvis Gutter) was wearing a red shirt with a Teamsters Logo and another was wearing a dark blue shirt with a Teamsters logo and another man who was wearing a plain blue shirt. Two Board Agents were present – Drew Hampton and Chris (last name unknown). (Witnesses: Jake Rubinstein, Hannah Landsman, Jenny Goltz.)

(d) At some point during the pre-election conference, before the polls opened, Board Agent Hampton and Hannah Landsman left the room to post signs directing voters to the polling place. While in the process of doing this, Ms. Landsman saw black and white campaign signs encouraging students to vote “yes” posted near the Regenstein entrance and on the third floor bulletin board in the hallway on the way to Room 354. Mr. Hampton instructed Ms. Landsman to remove the signs. Mr. Hampton also directed Ms. Landsman to remove a stack of the same flyers from the Entry Control desk on the first floor of the Regenstein Library (all visitors and staff must pass through Entry Control in order to access the Library). Close to the end of the pre-election conference, Ms. Landsman asked if she should take down additional signs if she saw them. Mr. Hampton said she should confer with her legal counsel about that. Mr. Gutter (Teamster Business Agent) was present at the time. Mr. Hampton instructed Mr. Gutter to remove any other signs that might be in the area. (Witnesses: Jake Rubinstein, Hannah Landsman, Jenny Goltz, Andrew Hampton;

Documents: Vote “Yes” Signs Removed from Entryway and Bulletin Boards.)

Regenstein Library

(e) After the pre-election conference, at approximately 10:00 a.m. on June 2, Ms. Goltz, Mr. Rubinstein and Ms. Landsman went to the second floor of Regenstein. There, they observed several more of the same signs posted on a bulletin board on the way to the bookstacks. Mr. Rubinstein then went to the fourth and fifth floor bulletin boards in Regenstein and observed the same signs on those bulletin boards. (Witnesses: Jake Rubinstein, Hannah Landsman, Jenny Goltz; Documents: photos of signs posted on Regenstein bulletin boards.)

(f) After the polls closed at 1:00 p.m. on June 2, at approximately 1:05 p.m., Ms. Goltz returned to Room 354. Ms. Goltz asked Mr. Hampton for clarification about whether the University should take down the signs that Ms. Goltz, Mr. Rubinstein and Ms. Landsman had observed posted on the bulletin boards earlier that morning after the polls opened. Mr. Hampton said not to remove them because, he explained, it was up to the Union to do so, not the Employer. He also disclosed to Ms. Goltz that he had already told the Union to remove any flyers that students might see “on the way to the polling place.” In other words, Board Agent Hampton made it clear that he had designated areas on the way to the polling place as a “no-electioneering zone.” (Witnesses: Jenny Goltz, Andrew Hampton.)

(g) The polls reopened that afternoon at 3:00 p.m. At approximately 4:00 p.m. Ms. Goltz walked outside of the Regenstein Library’s main entrance. There are two public entrances to the Regenstein Library: one main door on the south side of the building, and a smaller door located just east of the main entrance, but also on the south side of the

building. Most students and patrons of the Regenstein Library enter the building through the main door. Anyone entering the building through the main door must access that door through a set of steps leading up to the door, or a ramp located just west of the steps. At or around 4:00 p.m., Ms. Goltz observed the three Teamsters representatives she had met that morning at the pre-election conference, and another man whom she did not know, loitering immediately outside of the entrance to the Library. They were positioned just off to the east side of the steps leading up to the main entrance, approximately 15 to 20 feet away from the main door to the building. They had a large sign leaning up against the main steps which said "Union Election Today! Union Yes ✓. Ask a Teamsters Librarian." The sign had two Teamsters logos on it. Ms. Goltz was outside for approximately 5-10 minutes and observed the Teamsters representatives loitering by the Regenstein entrance next to the sign during that entire time. At one point the wind blew the sign over, and Mr. Gutter retrieved it and placed it back in front of the railing to the stairs. A student tweeted a photo of the same sign placed in the same location in front of Regenstein at 11:30 a.m. that morning, suggesting it had been displayed throughout both voting sessions that day. (Witness: Jenny Goltz, Hannah Landsman; Documents: photos of sign and Teamsters Representatives; photo of Regenstein main entrance; David Mihalyfy Tweet.)

SSA Library

(h) At approximately 1:00 p.m. on June 2, Mr. Rubinstein went to the School of Social Services Administration ("SSA") polling place. There, he observed one of the same signs posted on the bulletin board in the entryway to the SSA library that he had observed on bulletin boards at Regenstein. He also saw three people whom he recognized as Teamsters officials sitting on a stone bench outside the building, a few feet from the

entrance. This is the entrance voters would use to enter and leave the SSA building. One of these people was Denise Stiger, a Teamsters Local 743 union organizer, whom Mr. Rubinstein had met at a prior town hall meeting held for Library students to discuss the union petition. On June 2, Ms. Stiger was wearing a Teamsters Local 743 jacket with the Teamsters logo and her name stitched on it. A second Teamsters official (later identified as Mike Parker) was wearing a polo shirt with the IBT logo on it. Mr. Rubinstein later learned that Mr. Parker was from the Teamsters International Union in Washington DC. The third Teamsters official was a woman. Mr. Rubinstein later learned from speaking to her that she was from Teamsters Local 2010, which represents employees in the University of California system. She was wearing a multi-colored Teamsters button. (Witness: Jake Rubinstein; Documents: photos of posters near SSA entrance.)

(i) The SSA polling place (inside the SSA Library) closed for lunch at 1:00 p.m. At approximately 1:05 p.m., the three Teamsters officials described above went into SSA. Mr. Rubinstein entered after them and found them in the polling place with the assigned Board Agent, Chris (last name unknown). Mr. Parker announced loudly that a student sitting at a desk inside the SSA library/polling place was an eligible voter. The student (a man) stood up from the desk and asked to speak to Mr. Parker. The two of them then sat on a couch in the library and spoke. Mr. Parker was showing the student a sheet of paper. Mr. Rubinstein could not hear what either one of them said except he did hear Mr. Parker say something about "our contract." (Witness: Jake Rubinstein, Chris (Board Agent, last name unknown).)

Offer of Proof in Support of Objection No. 2:¹ The University objects to conduct affecting the results of the election because on June 2, 2017, Petitioner's agents stationed themselves in a location where voters would be forced to pass in order to get to the polling place and calling attention to themselves as Union officials. Under Board law, a party's mere presence in an area where voters are forced to pass may be sufficient to justify setting aside an election, particularly where the agents call attention to themselves. *Performance Measurements Co.*, 148 NLRB 1657 (1964); *Electric Hose & Rubber Co.*, 262 NLRB 186 (1982); see also *Nathan Katz Realty, LLC v. N.L.R.B.*, 251 F.3d 981, 993 (D.C. Cir. 2001) ("a party engages in objectionable conduct sufficient to set aside an election if one of its agents is continually present in a place where employees have to pass in order to vote"). In support of this objection, the University offers the following facts on which it would introduce witnesses and documents to establish if granted a hearing:

(a) As noted above, Board Agent Hampton instructed the Union to remove any electioneering material on the way to the polls, which effectively amounted to establishing a no electioneering zone. Yet, at approximately 4:00 p.m. on June 2, 2017 (during a voting session), Ms. Goltz walked outside of the Regenstein Library's main entrance. There are two public entrances to the Regenstein Library: one main door on the south side of the building, and a smaller door located just east of the main entrance, but also on the south side of the building. Anyone entering the building through the main door must access that

¹ Parties have been granted a hearing in cases with similar objections. See, e.g., *The Trustees of Columbia University in the City of New York*, Case No. 02-RC-142012, December 16, 2016 Supplemental Decision on Objections and Notice of Hearing. Indeed, taking Objections 1 and 2 together, the University's objections in this case are even stronger than in *Columbia University* because unlike in that case where the allegations were limited to the fact that union agents stationed themselves outside of the polling place, here Union agents were not only loitering outside of the polls but were actually observed electioneering around the polls.

door through a set of steps leading up to the door, or a ramp located just west of the steps. Ms. Goltz observed the three Teamsters representatives she had met that morning at the pre-election conference, and another man whom she did not know, loitering immediately outside of the entrance to the Library. They were positioned just off to the east side of the steps leading up to the main entrance, approximately 15 to 20 feet away from the main door to the building. One of the Teamsters representatives was wearing a bright red shirt with a Teamsters logo on it. The other had a blue shirt with a Teamsters logo on it. They had a large sign leaning up against the main steps which said "Union Election Today! Union Yes ✓. Ask a Teamsters Librarian." The sign had two Teamsters logos on it. Ms. Goltz was outside for approximately 5-10 minutes and observed the Teamsters representatives loitering by the Regenstein entrance next to the sign during that entire time. A student tweeted a photo of the same sign placed in the same location in front of Regenstein at 11:30 a.m. that morning, suggesting that the sign (and the Teamsters representatives) had been present throughout the voting period. (Witness: Jenny Goltz, Hannah Landsman; Documents: photos of sign and Teamsters Representatives; photo of Regenstein main entrance; David Mihalyfy Tweet.)

(b) Similarly, Teamsters Agents were observed stationed directly on the way to the second polling place in the SSA Library on June 2. Specifically, at approximately 1:00 p.m. on June 2, Mr. Rubinstein went to the School of Social Services Administration ("SSA") polling place. There, he observed one of the same signs posted on the bulletin board in the entryway to the SSA library that he had observed on bulletin boards at Regenstein. He also saw three people whom he recognized as Teamsters officials sitting on a stone bench outside the building, a few feet from the entrance. This is the entrance

voters would use to enter and leave SSA. One of these people was Denise Stiger, a Teamsters Local 743 union organizer, whom Mr. Rubinstein had met at a prior town hall meeting held for Library students to discuss the union petition. On June 2, Ms. Stiger was wearing a Teamsters Local 743 jacket with the Teamsters logo and her name stitched on it. A second Teamsters official (later identified as Mike Parker) was wearing a polo shirt with the IBT logo on it. Mr. Rubinstein later learned Mr. Parker was from the Teamsters International Union in Washington DC. The third Teamsters official was a woman. Mr. Rubinstein later learned from speaking to her that she was from Teamsters Local 2010, which represents employees in the University of California system. She was wearing a multi-colored Teamsters button. (Witness: Jake Rubinstein; Documents: photos of posters near SSA entrance.)

Offer of Proof in Support of Objection No. 3: The University objects to the conduct of the election because the Regional Director's Decision to direct an election on June 2 and 5-8, 2017, in the midst of the College Reading Period and final exams at the University, was contrary to Board policy and resulted in low voter turnout. Specifically, the General Counsel's Memorandum on Case Procedure Changes Effective April 14, 2015, GC 15-06, specifies that the "the regional director should avoid scheduling the election on dates on which all or part of the facility will be closed, on which past experience indicates that the rate of absenteeism will be high, or on days that many persons will be away from the facility on company business or on vacation." The Regional Director's decision to set an election for June 2 and 5-8 directly contradicts these principles and resulted in disenfranchisement of a substantial number (60%) of voters, contrary to the Board's mandate to ensure optimal enfranchisement of eligible voters. The Regional

Director's conduct in scheduling the election during finals at the end of the academic year, when most students were focused on final exams and leaving campus for the summer, was the proximate cause of the low turnout rate and disenfranchised a majority of the eligible voters. This was inconsistent with the Board's responsibility to establish the proper procedure for the conduct of its elections, including that all eligible employees be given an opportunity to vote. *Yerges Van Liners*, 162 NLRB 1259, 1260 (1967); *Alterman-Big Apple, Inc.*, 116 NLRB 1078 (1956).

In support of this objection, the University offers the following facts on which it would introduce witnesses and documents to establish if granted a hearing:

(a) As explained in the University's Expedited Request for Review filed on May 25, 2017, the Regional Director ignored the General Counsel's policies on scheduling elections. As a result, many students who were eligible or potentially eligible (i.e., overlapping students with the GSU unit) voters were disenfranchised. (Documents: University of Chicago's Expedited Request for Review and Motion to Stay Election; General Counsel's Guidance on Expedited Election Procedures.)

(b) Specifically, as explained in the University's Offer of Proof and Expedited Request for Review and Motion to Stay, the dates on which the Regional Director directed the election to take place were during the final examination period in which students are focused on their studies and finishing the quarter, rather than on an election. June 2, 2017 was the second day of the "College Reading Period" for the Spring 2017 Quarter. The College Reading Period is a designated period at the end of each quarter after classes end but before final exams. The College Reading Period is intended to give students the opportunity to study and prepare for final exams without interruption or distraction. Undergraduate students at the University are focused on their studies during this two-day

period. Undergraduate student library workers typically request time off and/or scale back their hours significantly during the reading period and finals week because they are preparing for finals. Final exams commenced on June 5, 2017 and ended on June 9, 2017. Most students leave campus for their summer destination once they have finished their last exam. (Witnesses: Jake Rubinstein; Hannah Landsman.)

(c) The University's concerns about disenfranchisement were, in fact, realized. Pursuant to the Regional Director's May 24, 2017 Decision and Direction of Election, there were 199 students who did not overlap with any other proposed bargaining unit² and therefore were indisputably eligible to vote in the election; and another 27 graduate students who overlapped with the GSU unit and whom the Regional Director stated would be permitted to vote subject to challenge. In other words, there were a total of 226 students potentially eligible to vote in the election. Only 93 students cast ballots (67 "yes", 13 "no" and 13 overlapping challenged ballots), a mere 41% turnout in this manual election. Thus, the outcome was determined by only 29.6 percent of eligible voters. In other words, 134 students (nearly 60%) who were potentially eligible to vote did not cast ballots, and a fraction of those eligible dictated the outcome for all. NLRB statistics on average voter

² On May 8, 2017, just a few hours after the petition in the instant case was filed, Graduate Students United, an affiliate of the Illinois Federation of Teachers, American Federation of Teachers, American Association of University Professors and AFL-CIO (hereinafter "GSU"), filed a petition seeking to be certified as the bargaining representative for:

[a]ll graduate students who are regular full-time and part-time teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, and lecturers in the School of Divinity, School of Social Services Administration, Division of Social Sciences, Division of Humanities, Division of Biological Sciences, Division of Physical Sciences, and Oriental Institute at the University of Chicago.

See Case No. 13-RC-198325. Of the 226 students covered by the instant petition, approximately 27 of them are also covered by the GSU's petition. The Regional Director did not resolve the voting eligibility of students who fell into both units, but permitted them to vote subject to challenge.

turnout and participation suggest there should have been a much higher turnout. Indeed, reports on the NLRB website reflect that there was, on average, 81% turnout for the first seven months of FY 2017, 80% for FY 2016, 81% for FY 2015, and 79% for FY 2014. These averages were obtained from election reports on the NLRB website. (Witnesses: Jenny Goltz, Jake Rubinstein; Documents: Voter Lists submitted by the University; Decision and Direction of Election, Tally of Ballots; <https://www.nlr.gov/reports-guidance/reports/election-reports>.)

Offer of Proof in Support of Objection No. 3: The University objects to the conduct of the election because the Regional Director erroneously denied the University a hearing on whether the students in the proposed unit are employees pursuant to Section 2(3) of the Act,³ and on whether they are temporary and/or casual employees. The University's Offer of Proof submitted to the Regional Director on May 17, 2017 contains a detailed summary of the evidence the University remains prepared to introduce on this issue. The University's Offer of Proof is attached hereto as **Exhibit 1** and is incorporated by reference.

Respectfully submitted,

s/ Jenny Goltz

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³ This, too, was inconsistent with the General Counsel's guidance specifically instructing that "[i]ssues as to whether individuals are employees within the meaning of Section 2(3) of the Act *must be litigated* at the initial hearing." Guidance Memorandum on Representation Case Procedure Changes Effective April 14, 2015, Memorandum GC 15-06, 2015 WL 1564882 (N.L.R.B.G.C. April 6, 2015) at pp. 16-17.

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CERTIFICATE OF SERVICE

I, Jenny Goltz, state under oath that I caused a copy of **The University Of Chicago's Offer Of Proof In Support Of Its Objections To The Conduct Of The Election And Conduct Affecting The Results Of The Election** to be filed on June 14, 2017. Copies of this filing have been served on the following individuals by e-mail:

Peter Sung Ohr
Regional Director
National Labor Relations Board
Region 13
219 South Dearborn Street
Chicago, IL 60604

s/ Jenny Goltz
Jenny Goltz